Director's Report
JLARC Impacts

2017



JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

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Impact: Medicaid

Study mandate: HJR 637 – Delegate Landes, SJR 268 – Senator Hanger (2015)

In 2016 JLARC studied the cost-effectiveness of Virginia's Medicaid program and developed recommendations and options to manage spending.

Improving cost-effectiveness of LTSS

Reliability of eligibility screenings

JLARC identified a risk that, under Virginia's current process, some eligibility screenings for long-term services and supports (LTSS) may be unreliable. A consistent, reliable screening process, that ensures only those individuals who meet eligibility requirements are approved for services, is necessary to support equitable and effective use of public resources. JLARC recommended a number of improvements to the LTSS eligibility screening process.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock
Appropriation Act

The General Assembly enacted legislation to strengthen DMAS oversight of LTSS eligibility screenings, with a focus on reliability, by directing DMAS to develop training and certification for LTSS eligibility screeners, to develop a process to test for consistency across screeners, and to validate that the eligibility screening tool is appropriate for screening children.

Improving cost-effectiveness of LTSS

Lower-cost services

JLARC identified several ways to ensure that LTSS are administered cost-effectively by supporting efforts to serve more recipients in lower cost, community settings, and mitigating the risk that providers over-estimate the amount of services needed by LTSS recipients.

JLARC recommended that DMAS provide incentives to MCOs, through a blended capitation rate, to ensure that LTSS are provided, when practicable, in community settings. JLARC recommended that DMAS assess the process for screenings done in hospitals and ensure they do not lead to unnecessary institutionalization.

JLARC identified an inherent conflict of interest for the providers who develop plans of care—a financial incentive to over-estimate the need for LTSS services. To address the conflict of interest, JLARC recommended that MCOs be ultimately responsible for developing plans of care.

▶ **Action by 2017 General Assembly**
Appropriation Act
HB 2304 – Delegate Orrock

The General Assembly enacted legislation that directs DMAS to improve the reliability of LTSS screenings performed in hospitals, to ensure that screenings do not lead to unnecessary institutionalizations, and requires that MCOs, rather than providers, develop the LTSS plans of care.

The blended capitation rate is in the process of being implemented by DMAS, and although it was not directly enacted by the legislature, the recommendation was supported by the work of legislators (HB 2304 conferees), who amended legislation that would have stopped DMAS from immediately implementing a blended rate.

Improving cost-effectiveness of LTSS

Cost-sharing for higher-income families

JLARC identified an option, in one specific eligibility category, to implement cost-sharing requirements that take into account family income, even though family income is not considered for determining eligibility. In this optional eligibility category (300 percent of SSI), the individual is treated as a "family of one," and income from the parents or a spouse is not considered when determining financial eligibility for LTSS. Individuals from families with higher incomes are treated the same as those from families living in poverty.

Virginia could develop new rules that would require cost-sharing on the basis of family income for individuals who have been determined to be eligible for LTSS under functional criteria and "family of one" financial criteria.

▶ **Action by 2017 General Assembly**
Appropriation Act

Through budget language, the General Assembly directed DMAS to propose cost-sharing requirements based on family income. These requirements, which would apply to one subset of recipients (within the optional 300 percent of SSI category), could not be adopted unless approved by the federal Centers for Medicare and Medicaid Services and the General Assembly.

Strengthening oversight of managed care spending

Rate-setting process

JLARC identified a need to improve the rate-setting process to ensure that MCO capitation rates are not higher than necessary. JLARC recommended strengthening the process for setting capitation rates paid to MCOs by preventing the perpetuation of avoidable, inefficient spending, and by rebasing administrative expenses for expected program changes.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock
Appropriation Act

The General Assembly directed DMAS to remove higher-than-necessary spending from capitation rates, to rebase administrative spending, and to make technical adjustments to the rate-setting process.

Strengthening oversight of managed care spending

MCO profits

To mitigate the state's risk of overpaying MCOs, JLARC recommended maintaining and strengthening its cap on MCO profits in the current Medallion managed care program, and implementing a similar profit cap for LTSS when those services have transitioned to managed care.

▶ **Action by 2017 General Assembly**
Appropriation Act

The General Assembly enacted legislation directing DMAS to strengthen the profit cap from its current eight percent down to three percent. The new profit cap includes incentives for MCOs to continue to improve cost-effectiveness by allowing MCOs to keep half of profits between three percent and 10 percent. The new profit cap will also be applied under the new system of managed LTSS.

Strengthening oversight of managed care spending

DMAS use of data

JLARC identified a need for better-informed oversight of MCOs, and recommended that DMAS be directed to increase its use of spending and utilization data. By making greater use of more detailed information, DMAS will be able to proactively identify trends and problems, understand their root causes, and work with MCOs to address them.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock
Appropriation Act

The General Assembly addressed several recommendations by enacting legislation to require detailed reporting by MCOs on spending and utilization of services. The General Assembly established a requirement that DMAS analyze the information from MCOs and report annually to the General Assembly on trends in MCO spending and efforts to address undesirable trends.

Strengthening oversight of managed care spending

MCO contract compliance

JLARC identified a need for DMAS to improve its overall contract compliance process as a way to ensure that MCOs are performing effectively. JLARC recommended that DMAS limit the reasons for which it may waive sanctions for noncompliance, enumerate those reasons in the managed care contracts, and enforce sanctions more consistently.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock

The General Assembly enacted legislation to direct DMAS to limit the reasons for which it will waive sanctions. The new compliance provisions will be incorporated in MCO contracts.

Strengthening oversight of managed care spending

High-cost chronic conditions

Certain high-cost chronic conditions account for a disproportionate amount of Medicaid spending. To reduce spending by improving health outcomes for individuals with these conditions, JLARC recommended that DMAS place stronger financial and contractual incentives on MCOs to more effectively manage the care of chronic conditions.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock

The General Assembly enacted legislation that directs DMAS to increase the incentives for MCOs to improve performance toward certain goals, including better management of chronic conditions.

Strengthening oversight of managed care spending

Behavioral health services and LTSS

JLARC identified a need for greater oversight of those categories of services that are undergoing transition to a comprehensive managed care delivery system. JLARC recommended additional MCO reporting requirements and strong oversight by DMAS of behavioral health services and LTSS, including consumer-directed personal care, as these services and recipients transition to managed care.

▶ **Action by 2017 General Assembly**
HB 2304 – Delegate Orrock

The General Assembly enacted legislation that directs DMAS to require MCOs to report on their efforts to identify and sanction behavioral health service providers that perform poorly. The legislation also requires MCOs to address specific risks related to consumer-directed personal care.

Impact: Medicaid

Study resolution: HJR 127 (2010) – Cox

In 2011, JLARC reported on a study of improper payments in the Medicaid program.

Preventing improper payments

JLARC reported that about .07 percent of fee-for-service Medicaid claims, valued at about $32 million, were estimated to have been paid in error in 2009. DMAS had successfully used pre-payment reviews to reduce improper payments to providers, but the JLARC report identified opportunities to further reduce improper payments through the use of an automated IT system.

Pre-payment analytics software systems can be used to detect Medicaid fraud and abuse. These systems use predictive modeling, provider profiling, trend analysis, and other analytics to identify claims that need additional scrutiny. JLARC recommended that DMAS either purchase a pre-payment analytics system or develop one internally, to be used in processing fee-for-service Medicaid claims.

▶ **Action by 2017 General Assembly**
HB 2417 Delegate Landes

The General Assembly enacted legislation that requires DMAS to use a pre-payment analytics software system to mitigate the risk of improper payments. The provision gives DMAS the authority to withhold payment until a potentially fraudulent or erroneous claim has been validated.

Impact: Virginia Economic Development Partnership

Study mandate: HJR 7 (2016) – Delegate Byron

In 2016 JLARC reported on the management and accountability of the Virginia Economic Development Partnership (VEDP).

Addressing management issues at VEDP

JLARC found that VEDP lacks many of the fundamental components of organizational management needed to operate efficiently and effectively and to coordinate well. Several key elements of effective and efficient management were missing from VEDP's operations: a deliberate strategy to meet its statutory responsibilities, adequate operational guidance for staff to carry out their job responsibilities, useful performance measures, and effective coordination with external partners. Without these elements, VEDP risks wasting limited resources and failing to meet its statutory responsibilities. JLARC included recommendations for VEDP, its board of directors, and the General Assembly to address these management deficiencies.

▶ **Action by 2017 General Assembly**
HB 2471 – Delegate Jones
SB 1574 – Senator Ruff

The General Assembly enacted legislation to address many of the identified management deficiencies. Among other changes, the new legislation requires VEDP to (1) develop and regularly update a strategic plan that includes specific goals and objectives and quantifiable performance measures for these goals and objectives; (2) develop and update biennially a comprehensive marketing plan; and (3) develop a process to evaluate the agency's ability to work with other state, regional, and local economic development organizations.

Strengthening VEDP administration of incentive grants

VEDP administers 10 incentive grant programs and awarded $384 million to companies over the past decade. During this time period, many of the projects supported through VEDP-administered incentive programs did not meet their performance requirements—highlighting the importance of having an effective incentives administration function.

JLARC found that VEDP's approach to administering incentive grants has exposed the state to avoidable risk of fraud and financial loss, and has increased the potential that state grant funding is not efficiently allocated. VEDP lacks comprehensive written policies and procedures for critical aspects of grants administration and its approach has not consistently prioritized projects that create quality jobs and will have the greatest economic benefit for Virginia's regions.

To address these issues, JLARC made recommendations that would add greater structure, consistency, accountability, and transparency to VEDP's approach to administering incentives, including the creation of a separate incentives management division.

▶ **Action by 2017 General Assembly**
HB 2471 – Delegate Jones
SB 1574 – Senator Ruff

The General Assembly enacted legislation to strengthen VEDP's administration of state incentive grants. Among other changes, the new legislation creates a separate division within VEDP, with staff responsible for administering incentive grants, and requires that VEDP staff seek board approval before allowing extensions to contractual deadlines. The legislation requires local Commissioners of the Revenue to provide all tax information necessary to facilitate VEDP's administration and enforcement of performance agreements with companies that have received incentive grants.

Improving governing and oversight capacity of the VEDP board

JLARC found that until recently the VEDP board of directors has played a minimal role in holding VEDP accountable. An effective and engaged governing board will be critical moving forward to address systemic management and accountability deficiencies and restore VEDP's performance and reputation.

JLARC recommended the General Assembly make a number of changes to improve the governing and oversight capacity of VEDP's board of directors. Recommendations included (1) amending the Code of Virginia to explicitly state that the board of directors is a supervisory board; (2) amending the Code of Virginia to establish minimum requisite qualifications and competencies for board members; and (3) creating an internal audit function that reports directly to the board to ensure it obtains comprehensive, routine, and unfiltered information from VEDP staff about agency operations, performance, and incentives.

▶ **Action by 2017 General Assembly**
HB 2471 – Delegate Jones
SB 1574 – Senator Ruff

The General Assembly enacted legislation that will improve the governing and oversight capacity of the VEDP board of directors. Among other changes, the new legislation clarifies that the board is a supervisory board, establishes requisite qualifications for board members, and creates an internal auditor position, which reports directly to the board.

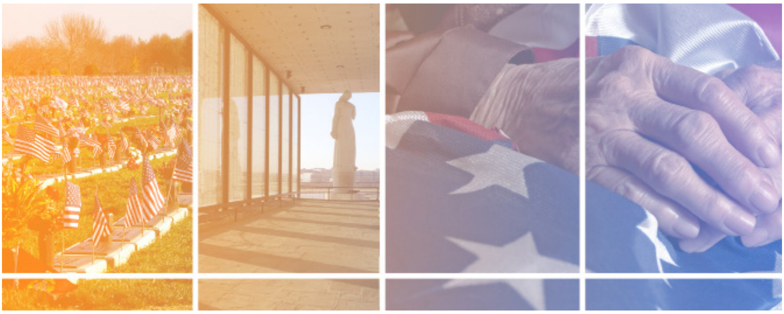
Holding VEDP accountable for addressing systemic deficiencies

Having identified the need for additional accountability at VEDP for its use of general funds, beyond the creation of a strengthened board and internal audit function, JLARC recommended that the General Assembly consider creating its own mechanism to ensure that VEDP and its board of directors are accountable for the efficient and effective use of state funds.

Specifically, JLARC recommended that the General Assembly (1) withhold the additional $1.5 million appropriated to VEDP in FY18 to allow VEDP the opportunity to show that it is capable of efficiently and effectively managing its existing resources before it receives additional funds from the state; (2) make any future VEDP appropriations (with the exception of funds necessary to implement JLARC recommendations) contingent on the VEDP board's execution of necessary improvements; and (3) require the VEDP board and CEO to report to the House Appropriations and Senate Finance committees on their progress toward implementing the recommendations.

▶ **Action by 2017 General Assembly**
Appropriation Act

In accordance with recommendations in the JLARC report, the General Assembly authorized the Comptroller to withhold $1.5 million in general funds until notified by the House Appropriations and Senate Finance committees that VEDP has submitted specific evidence of its progress toward meeting certain JLARC recommendations.



Impact: Veterans services

Study mandate: HJR 557 (2015) – O'Bannon

In 2015 JLARC reported on a study of the Virginia Department of Veterans Services. The department administers several programs, one of which, the Virginia Veteran and Family Support program, was created to monitor and coordinate mental health and rehabilitative services for veterans injured during their military service.

Clarifying the mission of the Virginia Veteran and Family Support program

JLARC found that staff of the Virginia Veteran and Family Support program needed clarification about the mission of the program. In some cases, staff may have offered services they were not fully qualified to provide, prompting concerns that veterans were not getting the services they needed.

JLARC recommended a series of improvements, to be developed and guided by a working group, which was created by the General Assembly in 2016. The working group produced a detailed program improvement plan that included draft statutory language recodifying the program's intent, structure, and operations.

▶ **Action by 2017 General Assembly**
HB 2206 – Delegate Cox

The General Assembly enacted legislation to clarify the mission of the Virginia Veteran and Family Support program. The legislation directs the program to (1) work with veterans to identify their need for services, (2) refer veterans to service providers who can treat them, and (3) monitor the progress of treatment.

Impact: Development and Management of State Contracts

Study mandate: Commission resolution

In 2015 JLARC reported on the development and management of state contracts. State entities spent more than $6 billion in state contracts in FY15, mostly for goods and services related to transportation, construction, and information technology. Interest in the topic was prompted by problems that arose from several recent high-profile contracts. Virginia has some statewide contracting policies, but the contracting process is decentralized; most contracts are procured, developed, and managed by individual agencies.

Balancing cost and quality with small business preferences

JLARC found that some statewide contracting policies do not adequately support the state's interests by protecting against high prices and poor quality goods and services. In particular, agencies may spend more than necessary to contract with certified small businesses.

State policies do not provide sufficient guidance on how agencies should evaluate cost and value when making contract awards to certified small businesses. The state allows agencies to award contracts to small businesses that are not the lowest bidders, as long as bids are determined to be "fair and reasonable," but this standard is not well defined.

JLARC recommended that agencies be given practical guidance for making the "fair and reasonable" determination when deciding to award a contract to a certified small business.

▶ **Action by 2017 General Assembly**
SB 1334 – Senator Ruff

The General Assembly enacted a provision that establishes a "fair and reasonable" threshold of five percent. An agency may award a contract to a certified small business that is not the lowest bidder, as long as the contract does not exceed the lowest bid by more than five percent.

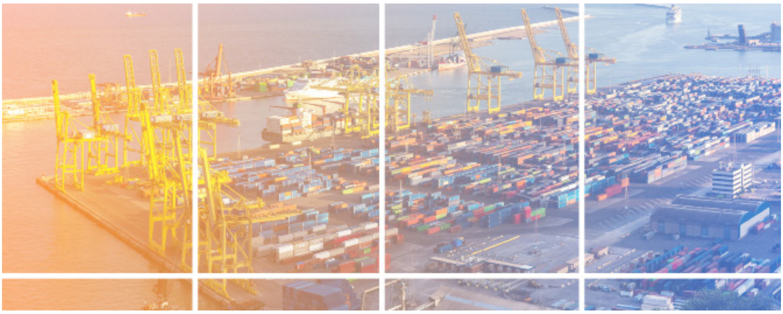
Allowing greater competition among vendors

JLARC investigated assertions that some vendors were unfairly disqualified for construction contracts. Some of the state's public colleges and universities used selection criteria that were so specific that only a small number of vendors could qualify to compete for contracts. In pre-qualification, vendors were excluded unless they had prior experience with the particular project delivery method. This prerequisite does appear to limit the competition unnecessarily.

JLARC recommended that DGS clarify in state policy that agencies should not automatically disqualify vendors from competing for construction contracts solely because they do not have previous experience with a specific project delivery method.

▶ **Action by 2017 General Assembly**
SB 1129 – Senator Ruff
HB 2366 – Delegate Albo

The General Assembly enacted legislation to restrict agencies in their use of criteria when pre-qualifying vendors. Under the new law, agencies may consider prior experience with a particular project delivery method—construction management or design-build—but they may not exclude vendors solely on the basis of this criterion.



Impact: Virginia Port Authority

Study resolution: HJR 621 (2013) – Jones

In 2013, JLARC reported on a study of the Virginia Port Authority (VPA), the third largest container port on the east coast. VPA operations have significant impacts on the state and on local economies.

Improving stability of VPA governance

JLARC reported that in 2011, after decades of steady governance, VPA experienced an abrupt transition of leadership, which began when the governor summarily removed and replaced 10 of the 11 VPA board members. The governor, who had the authority to remove VPA board members for any reason, cited as justification the port’s slow recovery from the recession of 2007–2009.

VPA customers perceived this action by the governor as a sign of instability and a cause for concern. In interviews, shippers and ocean carriers indicated that sudden changes and unpredictable governance could negatively impact their decisions to use VPA. JLARC recommended that the Code of Virginia be amended to limit the circumstances under which the governor may remove VPA board members.

▶ **Action by 2017 General Assembly**
SB 1415 Senator Spruill
HB 2367 Delegate Lindsey

The General Assembly amended the Code of Virginia to remove the provision that VPA board members serve “at the pleasure of the governor.”

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